

IN THE STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

WPS ENERGY SERVICES, INC.	:	
	:	
APPLICATION FOR CERTIFICATE OF	:	Docket No. 00-0199
SERVICE AUTHORITY UNDER SECTION	:	(Reopened)
16-115 OF THE PUBLIC UTILITIES ACT	:	

BRIEF ON EXCEPTIONS ON REOPENING  
OF WPS ENERGY SERVICES, INC.

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April 24, 2001

BRIEF ON EXCEPTIONS ON REOPENING  
OF WPS ENERGY SERVICES, INC.

WPS Energy Services, Inc., (“WPS-ESI”), pursuant to 83 Ill.Adm.Code Part 200.830, takes exception to certain portions of the Hearing Examiner’s Proposed Order on Reopening (“HEPO”), dated March 22, 2001. Failure to address any finding or conclusion of the HEPO should not be considered an abandonment of any position or argument made in WPS-ESI’s pleadings and presentations in this proceeding.

I. ARGUMENT

WPS-ESI agrees with, and supports, the Hearing Examiner’s conclusions with regard to the substantive issues in this case as they relate to the application of Section 16-115(d)(5) of the Public Utilities Act (the “Act”). (220 ILCS 5/16-115(d)(5)). It further agrees with the Hearing Examiner’s conclusion that WPS-ESI has demonstrated its compliance with Section 16-115(d)(5) and that the Illinois Commerce Commission’s (“Commission”) original issuance of a certificate of service authority to WPS-ESI as an alternative retail electric supplier (“ARES”) should be affirmed. (HEPO at 27).

However, it respectfully recommends that consideration be given to amendment or modification of the HEPO as it relates to conclusions reached in regard to - Commission’s Authority to Reopen Proceeding and Related Procedural Issues identified and discussed below.

1. This case was reopened on the basis of Section 10-113 of the Public Utilities Act, which allows the Commission to reopen and reconsider its orders or decisions. This Section provides in pertinent part:

“Anything in this Act to the contrary notwithstanding, the Commission may at any time, upon notice to the public utility affected, and after opportunity to be heard as provided in the case of

complaints, rescind, alter or amend any rule, regulation, order or decision made by it.”  
(220 ILCS 5/10-113)

As noted in pleadings and briefs filed by WPS-ESI, it is not a public utility. It is an ARES. (220 ILCS 5/3-105 and 5/16-102). Section 10-113 is a portion of the Act found in Article X, Article X is applicable to public utilities.

The Commission’s authority over ARES is set forth in Sections 16-115, 16-115A, and 16-115B of the Act. The Commission’s authority to issue a certificate and revoke a certificate is specifically designated in those sections. The circumstances and procedures for revocation of a certificate of service authority are set forth in Section 16-115B. The Commission has no authority over alternative retail electric suppliers other than the authority described in Sections 16-115, 16-115A and 16-115B.

Under these circumstances, Section 10-113 provided no basis for the reopening of this case. Consideration should be given to the modification or amendment of the HEPO to reflect this circumstance.

2. The Commission had no authority to reopen this case under 83 Ill.Adm.Code Part 200.900. In Quantum Pipeline Company et. al., v. Illinois Commerce Commission, 304 Ill.App.3d 310, 709 N.E.2d 950 (Ill.App. 1999) the court considered the nature of Section 200.900 of the Commission’s Rules of Practice. (83 Ill.Adm.Code Part 200.900). It noted that the rule did not describe the “process” that was due when a proceeding relating to the issuance of a certificate of service authority was reopened. The court indicated that it was necessary to read the rule in conjunction with the Act, thereby implying that the rule by itself did not provide the Commission with the authority to reopen a proceeding involving the issuance of a certificate of service authority, such

as the case at bar.

As noted above, the provision of the statute relied upon by the Commission does not apply to ARES. Therefore, the provision of the Act relied upon by the Commission does not provide the necessary support for the application of Section 200.900 of the Commission's procedural rules and clearly, under Quantum, that rule, by itself, does not provide the Commission with the authority to reopen the original proceeding in this cause.

3. WPS-ESI continues to believe that the procedure approved by the Commission for resolution of the issues on reopening failed to meet the minimum due process standards to which WPS-ESI was entitled, as the holder of a certificate of service authority previously issued by the Commission. It will not repeat those arguments here, but they are, nonetheless, incorporated.

## II. RECOMMENDED MODIFICATIONS TO PROPOSED ORDER

In Part V, the Commission's Conclusions, at page 27, the language commencing with the second full paragraph and continuing through the first full paragraph on page 28 should be deleted and the following language inserted in its place:

"The Commission has jurisdiction over ARES under Section 16-115, Sections 16-115A and Section 16-115B of the Act. The parties are in disagreement in this proceeding as to whether the Commission had the specific authority to reopen this proceeding under Section 10-113 of the Act and Section 200.900 of its Rules of Practice. Given the decision to affirm its original order granting WPS-ESI a certificate of service authority as an ARES, and given that WPS-ESI, as the holder of the certificate of service authority, was the party who had the right to object to the Commission's reopening under Section 10-113 of the Act and Section 200.900 of the Commission's procedural rules, the Commission is not compelled to resolve the dispute over its authority under Section 10-113 and Section 200.900 in this proceeding. Likewise, with regard to WPS-ESI's argument that it has been denied its procedural due process rights as a holder of a certificate of service authority from the Commission, it is not necessary, given its decision

on the merits in this case, to resolve those arguments in the context of this proceeding.”

### III. CONCLUSION

The Proposed Order on Reopening should be modified as recommended by WPS-ESI.

DATED this 24th day of April, 2001.

Respectfully submitted,

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NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on this 24th day of April 2001, we have electronically filed with the Illinois Commerce Commission, WPS Energy Services, Inc.'s Brief on Exceptions, along with Proof of Service thereon attached.

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PROOF OF SERVICE

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                                      :  
COUNTY OF MADISON    :

SS

I, Edward C. Fitzhenry, being an attorney admitted to practice in the State of Illinois and one of the attorneys for WPS Energy Services, Inc., herewith certify that I did on the 24th day of April, 2001, electronically file with the Illinois Commerce Commission, WPS Energy Services, Inc.'s Brief on Exceptions, and serve upon the persons identified on the attached service list, both electronically and by depositing same in the United States Mail, in Granite City, Illinois with postage fully prepaid thereon.

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SUBSCRIBED AND SWORN to me, a Notary Public, on this 24th day of April, 2001.

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